

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HOLMAN AUTOMOTIVE GROUP, INC.,
d/b/a RED HOLMAN PONTIAC GMC,

Plaintiff,

v.

Case No. 05-72620
Honorable David M. Lawson

CAPPO MANAGEMENT XVII, INC.,
d/b/a VICTORY TOYOTA, and CAPPO
MANAGEMENT XI, INC., d/b/a VICTORY
TOYOTA, and RITZ MARKETING, INC.,

Defendants.

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT, GRANTING IN PART
MOTIONS TO DISMISS, PERMITTING FILING OF AMENDED COMPLAINT *NON
PRO TUNC*, AND VACATING ORDER STAYING MAGISTRATE JUDGE'S ORDERS**

This matter is before the Court on three motions: (1) a motion for partial summary judgment filed by defendants Cappo Management XVII, Inc. and Cappo Management XI, Inc. (the "Cappo defendants") [dkt # 67]; (2) a motion to dismiss the plaintiff's state law claims filed by defendant Ritz Marketing, Inc. [dkt # 76]; and (3) a motion to dismiss the plaintiff's state law claims filed by the Cappo defendants [dkt # 90]. The Court heard oral argument on these motions in open court on October 23, 2006. After considering the parties' arguments, the Court announced its decisions from the bench.

Accordingly, it is **ORDERED** that the Cappo defendants' motion for partial summary judgment [dkt # 67] is **DENIED** for the reasons stated on the record.

It is further **ORDERED** that defendant Ritz's motion to dismiss [dkt # 76] is **GRANTED IN PART** and **DENIED IN PART**. Save for the plaintiff's negligence claim, the plaintiff's other state law claims (i.e., for violation of the Michigan Consumer Protection Act, Michigan Compiled

Laws § 445.901, *et seq.*, defamation, and tortious interference) are dismissed for the reasons stated on the record.

It is further **ORDERED** that the Cappelletti defendants' motion to dismiss [dkt # 90] is **GRANTED IN PART** and **DENIED IN PART**. Save for the plaintiff's negligence claim, the plaintiff's other state law claims (i.e., for violation of the Michigan Consumer Protection Act, Michigan Compiled Laws § 445.901, *et seq.*, defamation, and tortious interference) are dismissed for the reasons stated on the record.

It is further **ORDERED** that, for the reasons stated on the record, the plaintiff is permitted to file a second amended complaint *non pro tunc* consistent with this order, and the second amended complaint [dkt # 64] is deemed properly filed.

It is further **ORDERED** that the Court's October 17, 2006 order [dkt # 92] staying Magistrate Judge Mazjoub's discovery orders is **VACATED** for the reasons stated on the record.

It is further **ORDERED** that the objections [dkt # 82] to the magistrate judge's discovery orders [dkt # 74] are **OVERRULED**, and the discovery materials covered by the previously-stayed orders of the magistrate judge [dkts # 74 and 85] shall be furnished on or before **November 6, 2006** for the reasons stated on the record.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 23, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 23, 2006.

s/Felicia M. Moses
FELICIA M. MOSES